

Supreme Court, U. S.

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In The
Supreme Court of the United States
October Term, 1978

No: 78-1423

J. JEROME OLITT,

Petitioner,

-against-

FRANCIS T. MURPHY, JR., et al.,

Respondents.

**REPLY BRIEF IN SUPPORT OF A PETITION
FOR WRIT OF CERTIORARI**

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Statement

Petitioner submits this Reply Brief as a result of the impact of this Court's recent Opinion in Brown v. Felson, No. 78-58 [Argued February 21st, 1979 and Decided June 4th, 1979] and to place in proper perspective a statement contained in Respondent's Brief.

Point I

RES JUDICATA DOES NOT BAR A FEDERAL CIVIL RIGHTS ACTION WHERE THE BASIS OF THE RES JUDICATA IS A PRIOR STATE COURT PROCEEDING.

This Court's recent Opinion in Brown v. Felsen, supra, bears remarkable similarity to the issues presented herein. In Brown, the Bankruptcy Court claims that it was barred, under the doctrine of res judicata, from making an adjudication that fraud was involved in the creation of the underlying debt so as to prevent the dischargeability thereof. The res judicata was based upon a Consent Judgment rendered in the State Court. The District Court affirmed, as did the Court of Appeals, and this Court reversed the holding that res judicata does not bar the Bankruptcy Court from making a determination as to the existence of fraud; that such question was, for the first time, squarely an issue; and that this is the type of question Congress intended that the Bankruptcy Court resolve.

Similarly, in the case at bar, the District Court complained that it was barred, under the doctrine of res judicata, from making a determination that Petitioner's civil rights were violated. This res judicata was based upon a Judgment rendered in the State Court. As with Brown, res judicata does not bar the Federal Court from making a determination as to a federal question, which, for the first time, is squarely in issue. Furthermore, violations of federal rights were intended by Congress to be resolved in the Federal Court.

As in Brown, there is substantial indication that Congress intended the fullest possible inquiry from the history of the statute [see Petition at pages 20-21].

In paraphrasing this Court's "summation" in Brown, we believe that this Court should reject Respondents' contention that res judicata applies here and hold that the District Court is not barred from adjudicating Petitioner's Civil Rights Action. Adopting the rule that res judicata bars a Civil Rights Action would clearly emasculate the Civil Rights Act and take such actions out of the Federal Courts and force those issues onto State Courts concerned with other matters, all contrary to the clear Congressional intent.

Point II

RESPONDENTS MISCONSTRUE GETTY v. REID, 547 F.2d 971 (6th Circuit, 1977).

Respondents' claim on page 3 of their Brief that "Petitioner's claim that the decision of the Court of Appeals herein conflicts with Getty v. Reid, 547 F.2d 971 (6th Circuit, 1977), Petition, p. 18, is without merit."

In Getty, the Court held that the Federal District Court had jurisdiction over Civil Rights Actions challenging State Disciplinary Statutes and State Disciplinary Rules since the Complaints were original Complaints which alleged state law violations and were not merely proceedings seeking Federal Appellate Review of State Court Decisions and further that relief from State Disciplinary Proceedings can be had upon proof of Federal Constitutional Violations.

Point III

PETITIONER HAS PRESENTED THE IDEAL CASE FOR REVIEW.

The case at bar is ideal for the review sought because the Petitioner specifically reserved his

right, at each and every stage of the State Court Proceeding, to litigate his federal questions in the Federal District Court. While the Petitioner relies in part, upon England v. Louisiana State Board of Medical Examiners, 373 U.S. 411, this Court may hold that England applies only to the Pullman doctrine of abstention and yet the principals underlying England are fully applicable to all forms of abstention.

There can be no res judicata effect in the case at bar because the involuntary State Court Litigant expressly reserved his right to litigate his federal questions in the Court which Congress has chosen for that purpose.

CONCLUSION

Petitioner respectfully prays that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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